

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF RHODE ISLAND

SHERWOOD BRANDS OF  
RHODE ISLAND, INC.

v.

C.A. No. 00-287T

SMITH ENTERPRISES,  
INC. and JAKE SMITH

**MEMORANDUM AND ORDER**

TORRES, Chief Judge.

Sherwood Brands of Rhode Island, Inc. ("Sherwood") has moved to correct the amended judgment entered on October 22, 2002. For the reasons set forth below, that motion is DENIED.

**Background**

Sherwood filed a complaint against Smith Enterprises, Inc. ("Smith Enterprises") and Jake Smith ("Smith") alleging copyright infringement under the Copyright Act, 17 U.S.C. §§ 501, et seq. and trade dress infringement under the Lanham Act, 15 U.S.C. § 1125. Sherwood also alleged claims for unfair competition, misappropriation of trade secrets, dilution, tortious interference and breach of contract under state law.

All of the claims except the Copyright Act, Lanham Act, and tortious interference claims against Smith Enterprises were

dismissed.

A jury awarded Sherwood a total of \$391,537 on its Copyright Act and Lanham Act claims but returned a verdict for Smith Enterprises on the tortious interference claim.

Following the verdict, all parties moved for awards of attorneys' fees and costs. After hearing argument, this Court determined that Sherwood was entitled to prejudgment interest; attorneys' fees and costs in connection with its Lanham Act claim against Smith Enterprises; and costs in connection with its Copyright Act claim against Smith Enterprises. This Court also determined that Smith was entitled to attorneys' fees in connection with his defense of the Copyright Act and Lanham Act claims and to costs in connection with his defense of all of Sherwood's seven claims. Finally, this Court determined that Smith Enterprises was entitled to costs in connection with its defense of Sherwood's five state law claims. See December 21, 2001 Amended Order Regarding Attorneys' Fees and Costs.

Judgment was entered on April 2, 2002, but it did not include the attorneys' fees, costs and prejudgment interest. Sherwood moved, pursuant to Rules 59(e) and 60(a) of the Federal Rules of Civil Procedure, to amend the judgment to include the awards of attorneys' fees, costs and prejudgment interest previously made by this Court. That motion was granted and the

clerk was directed to calculate the amount of prejudgment interest pursuant to the rate set forth in 26 U.S.C. § 6621, part of the Internal Revenue Code (I.R.C.), because 15 U.S.C. § 1117(b) of the Lanham Act references that section. See August 29, 2002 Order Granting Plaintiff's Motion to Alter, Amend and Correct Judgment. This Court also awarded Sherwood \$147,537.61 in attorneys' fees and \$9,266.43 in costs with respect to its claims against Smith Enterprises; it awarded \$88,037.20 in attorneys' fees and \$4,153.67 in costs to Smith; and \$767.33 in costs to Smith Enterprises. See September 3, 2002 Memorandum and Order Awarding Attorneys' Fees and Costs.

An amended judgment was entered on October 22, 2002. Sherwood filed the instant motion to correct the amended judgment.

### Analysis

#### The Rate for Prejudgment Interest

Sherwood argues that the interest should be calculated at the large corporate underpayment rate set forth in I.R.C. § 6621(c). This Court disagrees.

Title 15 U.S.C. § 1117(b) requires that interest in trademark cases under the Lanham Act be calculated in accordance with I.R.C. § 6621. Section 6621 is part of the

Internal Revenue Code and is designed for computing interest regarding tax overpayments and underpayments by corporations and individuals. Generally, it provides for interest at a rate defined as the Federal short term rate plus 3 percentage points. I.R.C. § 6621(a)(2). That was the rate utilized by the clerk in calculating prejudgment interest. The large corporate underpayment rate applies only to C corporations and is equal to the Federal short term rate plus 5 percentage points. I.R.C. § 6621(c)(3)(A).

As a threshold matter, it should be noted that Sherwood has failed to establish that Smith Enterprises is a C corporation.

In any event, the awards of prejudgment interest under the Lanham Act are discretionary. See Babbitt Electronics, Inc. v. Dynascan Corp., 828 F. Supp. 944, 960 (S.D. Fla. 1993), aff'd. 38 F.3d 1161 (11<sup>th</sup> Cir. 1994)(prejudgment interest under § 1117 is within court's discretion). Here, there is no reason for using the large corporate underpayment rate. The purpose of awarding interest on a judgment is to compensate the prevailing party for the loss of the use of money to which that party was entitled. West Virginia v. United States, 479 U.S. 305, 310 n.2 (1987). The large corporate underpayment rate is a unique creature of the

Internal Revenue Code. Its apparent purpose is not to compensate the government for the loss of the use of tax revenue; but rather to deter large taxpayers from delaying payment of the taxes that they owe by removing the temptation to invest those amounts elsewhere and/or providing punishment for tardy payments.

There is no similar purpose to be served by applying punitive rates of interest for Lanham Act violations. The Lanham Act provides for punishment in the form of treble damages. Moreover, since this Court declined to assess treble damages in this case, it would be especially inappropriate to apply the large corporate underpayment rate in calculating interest.

#### Prejudgment Interest on Attorneys' Fees

Sherwood also seeks prejudgment interest on its award of attorneys' fees. That request, too, is denied.

A court has discretion to award prejudgment interest on attorneys' fees to compensate for delay. Missouri v. Jenkins, 491 U.S. 274, 283-84 (1989); Smith v. Vill. of Maywood, 17 F.3d 219, 221 (7<sup>th</sup> Cir. 1994); Cordero v. De Jesus-Mendez, 922 F.2d 11, 19 (1<sup>st</sup> Cir. 1990). However, prejudgment interest on attorneys' fees is "clearly not the norm." Data Gen. Corp. v.

Grumman Sys. Support Corp., 825 F. Supp. 361, 368 (D. Mass. 1993). On some occasions, interest has been awarded in civil rights cases, because awards of attorneys' fees are the sole means by which counsel are compensated and delays in payment discourage attorneys from accepting such cases, thereby frustrating the goal of private enforcement of federal laws. Jenkins, 491 U.S. at 282-83; Smith, 17 F.3d at 221. That rationale does not apply in cases like this where the parties pay counsel on an hourly basis from their own resources. Indeed, a number of courts have denied motions for prejudgment interest on attorneys' fees awards in intellectual property cases. Rini v. United Van Lines, Inc., 903 F. Supp. 234, 239 (D. Mass. 1995) ("little precedent exists for an award of prejudgment interest on attorneys' fees and costs, except in civil rights cases"); Fantasy Inc. v. Fogerty, C.A. No. 85-4929-SC, 1995 WL 261504, at \*8 (N.D. Cal. May 2, 1995) (holding that an award of prejudgment interest on attorneys' fees is not the norm, especially in the context of the Copyright Act); Data Gen. Corp., 825 F. Supp. at 368-69 (holding that an award of prejudgment interest on attorneys' fees is "clearly not the norm").

Finally, calculating interest on an award of attorneys' fees would present formidable practical problems. Attorneys'

fees are incurred incrementally over a period of time; and, therefore, it would be extremely difficult to calculate interest on each component of the total fee.

#### Period Covered by Prejudgment Interest

The clerk entered prejudgment interest as of the date of the amended judgment. Sherwood is entitled to no more.

#### Simple versus Compound Interest

Sherwood argues that interest should be compounded daily. This Court rejects that argument.

Both prejudgment interest and postjudgment interest have traditionally been calculated as simple interest and there is no discernible reason for treating interest on Lanham Act claims any differently. Section § 6622(a) does provide for daily compounding of "interest required to be paid under [the Internal Revenue Code] . . ." but prejudgment interest on a Lanham Act claim is not an amount required to be paid under the Internal Revenue Code.

Furthermore, those courts addressing the question in non-tax cases decided under I.R.C. § 6622 have held that only simple interest should be awarded. See Scalamandre v. Oxford Health Plans (N.Y.), Inc., 823 F. Supp. 1050, 1064 (E.D.N.Y

1993)(involving prejudgment interest on ERISA damages);  
McLaughlin v. Cohen, 686 F. Supp. 454, 458 (S.D.N.Y.  
1988)(same); Sabatini v. Briggs, C.A. No. 97-6252, 1999 WL  
566854, at \*2 (S.D.N.Y. Aug. 3, 1999) (same).

### Conclusion

For all of the foregoing reasons, Sherwood's motion to  
correct the amended judgment is hereby denied.

By Order,

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Deputy Clerk

ENTER:

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Ernest C. Torres

Chief United States District Judge

Date: , 2003